

HRAs AND COBRA – CALCULATING THE COBRA PREMIUM FOR HRAs

“So, HRAs really are health plans subject to COBRA,” you say. But of course, and they always have been. The issuance of the IRS information letter discussed below seems like a good time to review the HRA/COBRA issue because it frequently crosses my desk.

Last fall the IRS released an “information letter” addressing an employer’s calculation of the COBRA premium charged to a former employee for continued coverage under a health reimbursement arrangement (HRA). The former employee received a COBRA notice /election form and the cost of medical plus HRA coverage seemed quite high to him. This individual wrote his Congressman, who then wrote the IRS seeking clarification. The individual also wanted the IRS to audit the employer’s HRA, but that’s another story.

IRS INFORMATION LETTER 2017-0027

The existence and content of the information letter should be sufficient confirmation for those skeptics refusing to believe the IRS really intended to apply COBRA to HRAs. The IRS summarized its prior guidance on the issue, indicating in the letter that:

- HRAs are subject to COBRA
- the COBRA applicable premium under an HRA may not be based on a qualified beneficiary’s own reimbursement amounts available from the HRA
- the COBRA premium for an HRA is determined by applying the existing COBRA rules for self-funded medical plans

COBRA permits the plan administrator to choose between one of two methods for determining COBRA premiums for a self-funded plan. The applicable premium can be calculated either on:

- an actuarial basis, or
- on the basis of past cost

Pardon me if you feel that I am revealing the end of the story ahead of time, but the IRS has yet to issue specific guidance on how to determine the applicable premium under either method listed above – and the letter provides no additional illumination.

CALCULATING THE COBRA APPLICABLE PREMIUM FOR HRAs

As you now know, IRS' guidance to date provides little insight regarding pricing the HRA component for COBRA purposes. Existing guidance merely states that an HRA complies with COBRA if the applicable premium (however calculated under COBRA) is the same for all qualified beneficiaries (QBs) – meaning COBRA rates for HRAs are not specific to each (QB) and are not determined based on the unspent amount available in an individual's HRA at the time of the qualifying event (QE).

Applying general COBRA rules to HRAs, it follows then that the HRA COBRA rate will be the QB's pro rata share of the total cost of the HRA plan for the year, as determined by the employer/sponsor:

- if using an actuarial basis, the actuary must take into account some measure of expected reimbursements under the HRA as a whole and apportion the cost across the total number of participants in the plan
- if using a historical cost basis (no need for an actuary), the employer will take into account the total cost of the HRA for the year, which is then apportioned among the total number of participants in the plan.

The HRA COBRA rate remains in effect (without change) for a fixed 12 month period (the “determination period” in COBRA parlance) and then is recalculated to be in effect for the next 12 month period and so on.

Here is a simple example:

Employer maintains a calendar year HRA. For COBRA purposes, it adopts a calendar year determination period which matches the plan year of the HRA. For example, for 2018, the COBRA applicable premium for the HRA component of the employer's group health plan is \$150 (calculated based on the plan's claim experience in calendar year 2017 divided by the number of HRA participants in 2017, and then divided by 12). Continuing this example, for the 2019 determination period, the COBRA applicable premium for the HRA component of the employer's group health plan is \$145 (calculated based on the plan's claim experience in calendar year 2018 divided by the number of HRA participants in 2018, and then divided by 12). These amounts would then be added to the COBRA rate for the group health plan and presented as a combined COBRA rate per month.

CAN THE HRA BE EXCLUDED FROM THE COBRA OFFERING?

No. COBRA requires that the QB be offered an election to continue the same health benefits available to similarly situated non-QBs. Logically, if active employees are offered a group medical plan with an HRA benefit, then a QB should be offered continuation in the very same option, including the HRA. Once this is done, it is arguably possible – although still unclear -- that the employer could offer continuation in the group health plan only, without the HRA option as a second choice; but not as the only choice. This likely will increase the employer's administrative burden and may complicate COBRA communications. I do not recommend to my clients that they offer such an alternative.

NOTE: While a group medical plan only option may seem like a harmless COBRA offering, employers with high cost sharing may not pass the Massachusetts minimum creditable coverage (MCC) requirement for the COBRA offering without the HRA to offset deductibles exceeding the MCC limits.

Finally, as a result of the ACA and the IRS' HRA integration requirement, HRAs should never be offered under COBRA as a stand-alone option.

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